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KNOBBE MARTENS OLSON & BEAR
620 NEWPORT CENTER DR
16TH FLOOR
NEWPORT BEACH, CA 92660

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In re Application of
Hammond, Giordano, and Dillman
Application No. 08/485,472
Filed: June 7, 1995
For: GENE THERAPY FOR MYOCARDIAL
ISCHEMIA

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(a)

Papers filed August 30, 1996, in response to a "Decision Refusing Status Under 37 CFR 1.47(a)" included:

- (1) a declaration of facts of Virginia de la Puente setting forth the last known address of the non-signing inventor Giordano, and providing proof that a copy of the application papers was sent to the non-signing inventor, but that Mr. Giordano refused to sign the declaration (Exhibits A and B are attached);
- (2) a declaration of facts of Wean Khing Wong (Exhibits A, B and C was attached, Exhibit A-a declaration of inventor Dillman, Exhibit B- a "Designation of Domestic Representative" signed by inventor Dillman, and Exhibit C- an assignment signed by Mr. Dillman)
- (3) a "Declaration and Petition" signed by Wolfgang Dillman in compliance with 37 CFR 1.63;
- (4) a "Declaration and Petition" signed by H. Kirk Hammond in compliance with 37 CFR 1.63;
- (5) a power of attorney by assignee and exclusion of inventor under Rule 32 (copy of that previously filed);
- (6) an assignment signed by Mr. Dillman and an assignment signed by Mr. Hammond;
- (7) a "Designation of Domestic Representative" signed by inventor Dillman;
- (8) a post card receipt showing receipt of certain correspondence on September 18, 1995;
- (9) an associate power of attorney;

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(10) a petition for a one-month extension of time and fee;
and

(11) a petition under 37 CFR 1.47(b).

As stated in the prior decision, the power of attorney by assignee, filed September 18, 1995, is defective since it does not comply with 37 CFR 3.73(b). The power of attorney is also defective because only an assignee of an entire interest can appoint a power of attorney to the exclusion of the inventors. The assignee is not an assignee of the entire interest since Mr. Giordano has not assigned his interest. Furthermore, a power of attorney cannot be given by one of several joint inventors without a petition under 37 CFR 1.182. Accordingly, the "Designation of Domestic Representative" signed by Mr. Dillmann cannot be entered. It is suggested that a power of attorney be included within a declaration under 37 CFR 1.63 that is signed by the inventors on behalf of themselves and on behalf of Mr. Giordano.

A petition under 37 CFR 1.47(b) is inappropriate in this instance since all but one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign, accordingly the petition will be treated as a petition under 37 CFR 1.47(a).

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status and Application Branch is authorized to:

- (1) accept this application under Rule 1.47(a);
- (2) process the application with the inventors being Hammond, Giordano and Dillman, using the Declarations filed August 30, 1996 (signed by Hammond and Dillman); and
- (3) mail a filing receipt with a filing date of June 7, 1995.

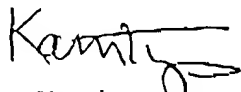
As provided in Rule 1.47(a), this Office will forward notice of this application's filing to non-signing inventor Giordano at the address given in the Declaration. Notice of the filing of this application will also be published in the Official Gazette.

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Inquiries regarding this decision should be directed to the undersigned at (703) 306-3159.



Karin Tyson
Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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